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September 30, 2004

VIA ELECTRONIC FILING

Marlene R. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Ex Parte***, Intercarrier Compensation for ISP-Bound Traffic (CC Docket Nos. 99-68, 96-98); and Core Communications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order (WC Docket No. 03-171)

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, this letter provides notice of an *ex parte* meeting John Sumpter (Vice President – Regulatory, Pac-West Telecomm, Inc.) and I had with Christopher Libertelli (Senior Legal Advisor to Chairman Powell) and Aaron Goldberger (Legal Advisor, WTB) on September 29, 2004. At the meeting, PacWest supported elimination of the FCC's existing growth cap and new market restriction on ISP-bound traffic and advocated classifying ISP-bound traffic as Section 251(b)(5) traffic. The positions advanced at the meeting were consistent with PacWest's written filings in these dockets.

PacWest strongly disagreed with claims that dial-up minutes of use ("MOU") are still in a strong growth period. Verizon's filings in other forums support the proposition that dial-up MOU growth has slowed significantly and can be expected to slow even further in the next three years.[1] PacWest also noted that, in the company's estimation, dial-up traffic MOUs for the

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[1] *Investigation as to Whether Certain Calls Are Local and Independent Telephone Companies and Competitive local Exchange Carriers – Local Calling Areas*, Dockets DT 00-223, 00-054, Initial Brief on Rehearing of Verizon New Hampshire (NH PUC, Sept. 17, 2004) (arguing that "in approximately two years, []dial-up only Internet access service offering [] likely will be supplanted by the technology changes in the marketplace."). *Id.* at 12.

market have leveled off. While some Internet users have migrated to broadband, thus decreasing dial-up MOU, other consumers have joined the Internet revolution for the first time, thus making up some of the MOU lost to broadband. In PacWest's experience, these new Internet users often use entry-level computers and basic Internet functions. Low cost dial-up Internet service acts as the entry-level for first time users. PacWest emphasized that it would be bad public policy to disincent these new Internet users from using dial-up, as they may not be able to afford to join the Internet revolution if they were forced to enter it via broadband.[2] Today's new dial-up users are tomorrow's broadband users.

With respect to the allegation that removal of the growth cap would result in increased CLEC merger activity that would also "grow the pie" of dial-up MOU, PacWest strongly disagreed. Removing the growth cap will incent CLECs to compete for a larger market share of ISPs' business. If a CLEC wins new business by wooing an ISP customer away from a competitor, the total number of dial-up MOU will not increase, it will be allocated differently among service providers. In short, removing the growth cap will encourage more competition in the market to provide services to ISPs, which will benefit the ISPs and their end users alike.

Pursuant to the Commission's *ex parte* rules, this letter is being filed electronically in the above-referenced dockets. Please direct any questions regarding this filing to the undersigned.

Sincerely,

/s/

Tamar E. Finn

cc: Christopher Libertelli
Aaron Goldberger
John Sumpter

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[2] To be clear, PacWest does not agree with the argument that removing the growth caps and compensating CLECs for the termination functions they perform for ILECs' customers "subsidizes" dial-up Internet access. To the contrary, requiring ILECs to pay the same rate they claim is their cost for terminating traffic would give ILECs the incentives to set an accurate, cost-based rate for all terminating compensation.